assignment for the benefit of creditors. A judgment creditor sued to set aside the assignment on the ground of fraud and was successful as to a portion of the property transferred to the assignee. No benefit, however, was obtained from such judgment, and the creditor now seeks to prove his claim under the assignment. *Held*, that the claim may be proved, as no election has been exercised to take in hostility to the assignment, and the judgment does not constitute a bar to such relief. *In re Garver* (1903), — N. Y. —, 68 N. E. Rep. 667.

The precedent followed by the court is that established in *Mills* v. *Parkhurst*, 126 N. Y. 89. A dissenting opinion calls attention to the fact that these cases, though in other respects similar, differ in that in the Mills case the action to set aside the assignment was unsuccessful, while in this case the action was successful. The court holds that the Mills case notwithstanding this difference is directly in point, as an election of remedies is not determinable by the result of a suit but by its commencement. According to the Mills case, the commencement did not constitute an election to take in hostility to the assignment. The doctrine of res adjudicata does not control in this case to bar the creditor from proving his claim. The judgment setting aside the assignment of a portion of the property did not imply that the creditor had no other remedy than proceeding against such property, but should he fail to secure money enough to satisfy his claim under this proceeding, he could resort to any other proceedings necessary to reach the debtor's property, and so could share in the distribution of the assigned estate. The Mills case cited above seems to be the only case in point with this decision, but see *Thompson* v. *Fry*, 51 Hun, 296.

BANKRUPTCY—DISCHARGE—DEBT CREATED IN FIDUCIARY RELATION—LAUNDRY AGENT.—Defendant acting as laundry agent for plaintiff has the duty of collecting and forwarding articles to the laundry, receiving them back and distributing them, making collections and remitting after deducting the stipulated commission. After the agency has continued for somewhat over a year, plaintiff brings suit against defendant to recover a balance due. Defendant pleads as defense a discharge in bankruptcy under the United States statute. *Held*, that a fiduciary relation exists between defendant and plaintiff so that under Bankr. Act 1898 § 17 (Act July 1, 1898, c. 541, 30 Stat. 550 [U. S. Comp. Stat. 1901, p. 3428]) a discharge does not avail defendant against plaintiff's claim. *Shipley* v. *Platts* (1903), — So. Dak. — 97 N. W. Rep. 1.

The section of the bankruptcy act referred to provides that the discharge of a bankrupt shall not affect debts created by his misappropriation or defalcation while acting in any fiduciary capacity. The only question in the case is whether any such fiduciary relation exists between defendant and plaintiff. If there is simply the relation of debtor and creditor, the section does not apply. It has been held that the section applies only to technical or special trusts to be distinguished from those implied by law from the contract. *Bracken* v. *Milner*, 104 Fed. Rep. 522. So it has been held that a debt due by a bankrupt in the character of commission merchant is not within the section. *In re Basch*, 97 Fed. Rep. 761; *Knott* v. *Putnam*, 107 Fed. Rep. 907. In the present case the court says the obligation of the defendant partakes more of a fiduciary character than that of the ordinary commission merchant. In the case of the commission merchant the contract may involve but a single transaction, while in this case a confidential relation had existed for more than a year. For supporting authority, see *Lemcke* v. *Booth*, 47 Mo. 385, 4 Am. Rep. 326; *In re Kimball*, Fed. Cas. No. 7, 769; *Matteson* v. *Kellogg*, 15 Ill. 547.